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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 Eye Street, NW

Washington, D.C. 20536

SEP 24 2003

FILE: WAC 02 161 50745 Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a dental laboratory. It seeks classification of the beneficiary as a trainee in an advanced cosmetic dental implant training program. The director determined that the petitioner had not established that the training is not on behalf of a beneficiary who already possesses substantial training and expertise. The director also found that the training is in a field in which it is unlikely that the knowledge or skills would be used outside the United States.

On appeal, counsel submits a brief stating that the beneficiary does not have previous training or experience in the proposed field of training. Counsel also asserts that the beneficiary will use the knowledge and skills outside the United States, as shown by the job offer that awaits the beneficiary upon her return to Japan.

Section 101(a)(15)(H)(iii) of the Act, 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a training program showing a detailed two-year program covering gold-titanium-palladium castings and implant restorations; a letter from Masahiro Fukuma of the Osaka Dental Institute stating that the proposed training is unavailable in Japan; a letter from Isamu Ishibashi of a dental laboratory in Japan again stating that the training is unavailable in Japan and confirming that the beneficiary would be working for the company upon completion of her training; a variety of training materials; and several corporate documents.

The director determined that the petitioner had not established that the training is not on behalf of a beneficiary who already possesses substantial training and expertise. The letter provided by the petitioner to support the initial petition states that the beneficiary graduated from a university in March 1995 with a degree in Japanese Literature. In April 1999, she enrolled in the Nihon College of Dental Technology for a two-year program, graduating in March 2001 and becoming licensed as a dental technician in April 2001. The instant petition was filed in April 2002, meaning that the beneficiary had approximately one year of experience as a dental technician.

The petitioner states that the beneficiary had no experience in the field of dental implants, as the training does not exist in Japan. In support of this claim, the petitioner submitted a letter from Masahiro Fukuma, a director of the Osaka Dental Institute who is in charge of the Department of Instruction at the Institute. Mr. Fukuma has been a dental technology instructor for 23 years, has published more than 10 books on the subject of dental technology, and has been published in numerous scholarly journals. Mr. Fukuma stated, "Instruction and training relating to advanced dental technology topics related to dental implant technology is extremely limited in Japan. There is no regular instruction or training available in Japan on such

state-of-the-art subjects as the requirements for the fabrication of dental implants from hybrid resins and metals including but not limited to gold-titanium-palladium composites."

It appears that the beneficiary does not have substantial training and expertise in the proposed field of training, as the opportunity for this training does not exist in her home country and there is no evidence that she has received any other kind of training in this field. Therefore, the comments of the director on this ground for denial are withdrawn.

The director also found that the training is in a field in which it is unlikely that the knowledge or skills would be used outside the United States. On appeal, counsel submits a letter from D&F Corporation in Japan, an affiliate of the petitioner, G&H Dental Arts, Inc. Isamu Ishibashi, President of D&F Corporation, states that his company will employ the beneficiary upon her successful completion of the training program, once she has the background necessary to manufacture dental implants and related technology. This letter indicates that the beneficiary will be using the skills gained during the training outside the United States, and therefore, the comments of the director on this ground for denial are withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.